

### **REMARKS**

Claims 1, 3, 5, 179-184, 186, 187, 189, 192, 193, 195, 201, 204-212, 222-227, 231-233, 241, 242, 244, 245, 250, 280-299, 303, and 305-308 are pending in this application. Claims 1, 5, 179, 181, 183, 184, 186, 187, 189, 192, 193, 195, 201, 204-212, 222-227, 231-233, 241, 242, 244, 245, 250, 280-299, and 303-308 have been deemed allowable. No amendments to the claims are made herein.

#### **1. THE OBVIOUSNESS-TYPE DOUBLE PATENTING REJECTION SHOULD BE WITHDRAWN**

In the Advisory Action mailed June 15, 2005, the Examiner stated that claims 3, 180, and 182 remain rejected under the judicially created doctrine of obviousness-type double patenting for the reasons of record. Specifically, claim 180 is rejected as allegedly unpatentable over claim 10 of U.S. Patent No. 6,656,467 ("the '467 patent"). The Examiner stated that although the conflicting claims are not identical, they are not patentably distinct because SEQ ID NO:9 recited in claim 10 of the '467 patent is the same sequence as the SEQ ID NO:10 recited in present claim 180 and that, lacking any structural differences, the properties of the antibodies are expected to be the same.

In addition, as set forth in the Final Office Action dated February 9, 2005 ("the Final Office Action"), claims 3, 180, and 182 are rejected as allegedly unpatentable over claims 55-60 of U.S. Patent No. 6,818,216 ("the '216 patent"). The Examiner stated that although the claims are not identical, they are not patentably distinct from each other because claims 3, 180, and 182 of the present application are drawn to antibodies comprising SEQ ID NOS: 10, 19, and 20, and the conflicting claims are directed to compositions comprising antibodies having the same sequences. (see the Final Office Action at page 3).

In response, Applicants submit herewith a Terminal Disclaimer which disclaims the terminal part of any patent granted on the above identified application which would extend beyond the expiration date of either U.S. Patent No. 6,656,467, which issued on December 2, 2003 ("the '467 patent"), or U.S. Patent No. 6,818,216, which issued on November 16, 2004 ("the '216 patent"), and further that any patent so granted on the above identified application shall be enforceable only for and during such period that the legal title to said patent shall be the same as the legal title to U.S. Patent Nos. 6,656,467 and 6,818,216.

Attached to the Terminal Disclaimer are copies of the following assignments evidencing that MedImmune owns the entire right, title, and interest in the subject application:

- (i) from Jeffry **Watkins** and William **Huse** to Applied Molecular Evolution, Inc. (**Exhibit 1**);
- (ii) from Herren **Wu** to Applied Molecular Evolution, Inc. (**Exhibit 2**); and
- (iii) from Applied Molecular Evolution, Inc. to MedImmune, Inc. (**Exhibit 3**).

An assignment from the inventors, James **Young**, Scott **Koenig**, and Leslie **Johnson**, to MedImmune, Inc., was recorded in the United States Patent and Trademark Office on March 21, 2001, at Reel/Frame 011688/0233 in connection with the subject application.

In support of the Terminal Disclaimer, Applicants also enclose copies of the following Assignments which show that MedImmune owns the entire right, title, and interest in the '467 and '216 patents:

- (iv) from Applied Molecular Evolution, Inc. to MedImmune, Inc. in connection with the '467 patent (**Exhibit 4**);
- (v) from Jeffry **Watkins**, William **Huse**, and Herren **Wu**, to Applied Molecular Evolution, Inc. in connection with U.S. Serial No. 09/996,288 which issued as the '216 patent (**Exhibit 5**); and
- (vi) from Applied Molecular Evolution, Inc. to MedImmune, Inc. in connection with the '216 patent (**Exhibit 6**).<sup>1</sup>

Assignments by the inventors, Jeffry **Watkins**, William **Huse**, and Herren **Wu**, to Applied Molecular Evolution, Inc. and by the inventors, James **Young**, Scott **Koenig**, and Leslie **Johnson**, to MedImmune, Inc. in connection with U.S. Serial No. 09/771,415, which issued as the '467 patent were recorded in the United States Patent and Trademark Office on October 21, 2002, at Reel/Frame 013402/0257 and Reel/Frame 013402/0673, respectively.

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<sup>1</sup> The assignments submitted as Exhibits 1-6 have been sent to the United States Patent and Trademark Office for recordation.

Assignments by the inventors, James **Young**, Scott **Koenig**, and Leslie **Johnson**, to MedImmune, Inc. in connection with the '216 patent were recorded in the United States Patent and Trademark Office on May 21, 2002, at Reel/Frame 012920/0196.

Thus, the instant application and the '467 and '216 patents are all owned in their entirety by MedImmune, Inc.

### CONCLUSION

Applicants believe that the present claims meet all of the requirements for patentability. Entry and consideration of the foregoing remarks into the file of the subject application is respectfully requested.

No additional fees are deemed necessary in connection with the filing of this Amendment. However, if any additional fee is required, please charge Jones Day Deposit Account No. 50-3013.

If a telephone interview would be of assistance in advancing prosecution of the subject application, Applicants' undersigned attorney invites the Examiner to telephone her at the number provided below.

Respectfully submitted,

Date October 5, 2005

  
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